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Supreme Court, U.S.
FILED
DEC 6 1986
JOSEPH F. SPANIOL, JR.
CLERK

NO. 85-2169

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

SAINT FRANCIS COLLEGE, ET AL.,

Petitioners

v.

MAJID GHAIDAN AL-KHAZRAJI,
a/k/a MAJID AL-KHAZRAJI ALLAN,

Respondent.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

JOINT APPENDIX

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Petition for Certiorari Filed
July 2, 1986
Certiorari Granted October 6, 1986

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DOCKET ENTRIES

Date	NR.	PROCEEDINGS
1980		
Oct. 30	1	Complaint filed.
Oct. 30	---	Summons issued.
Nov. 7	2	Amended complaint filed, adding defts and amending caption
Nov. 7	---	Summons issued (as to amended complaint)
Nov. 10	3	Amendment to complaint filed pro se, adding defts.
Nov. 10	---	Summons issued as to amended complaint filed pro se.
Dec. 22	4	Stip. by parties to extend time pursuant to Rule 511 to answer or motion by defts. extended for 30 days to 1/23/81.
Dec. 22	5	Summons returned served on Dr. Marian Kirsch, Dept. of Biology on 12/3/80; on St. Francis College on 12/3/80; on Kirk Weixel on 12/3/80; on Fr. Gervase Cain, Exec. V. P. on 12/3/80; on Fr. Christian Oravec, Pres. on 12/3/80; on John Coleman on 12/3/80; on John Willoughby, V. P. for Academic Affairs, St. Francis College served on 12/3/80; on Dr. John Coleman, Dept. of History on

DATE	NR.	PROCEEDINGS
		12/3/80; on Kirk Weixel, Dept of English served on 12/3/80; on Gervase Cain on 12/3/80; on Dr. John Willoughby on 12/3/80; on Dr. Rodrique Labrie, served on 12/3/80; Dr. Adrian Baylock served on 12/3/80; served on St. Francis College on 12/3/80; on Dr. Albert Zanguccki, served on 12/3/80; on Dr. David McMahon served on 12/3/80; on Adrian Baylock on 12/3/80; Albert Zanzuccki served on 12/3/80; on Rodrigue Labrie served on 12/3/80; on Marian Kirsch served on 12/3/80.
1981		
Jan. 23	6	Motion for more definite statement, motion to strike, motion to dismiss first 2 complaints (original one and amended complaintl), motion to dismiss action, and motion to postpone consideration of motion to dismiss action until decision rendered on motion for more definite statement, motion to strike and motion to dismiss 1st 2 complaintss (original one and amended complaintl) filed. by defts.
Feb. 9	7	Order entered denying defts' motion for more definite statement; futher ordered

DATE	NR.	PROCEEDINGS
		that motion of defts. to dismiss action brought under 42 USC 1986 be granted but denied as to 42 USC 1981, 1983, and 1985; further ordered that defts' motion to strike pltf's 1st 2 complaints and motion to dismiss pltf's 1st 2 complaints be denied (Ziegler, J.)
Feb. 13	8	Motion to extend time to file responsive pleading filed by defts. and order entered granting same; counsel for defts. to file motion for reconsideration by 2/17/81; time for defts. to file responsive pleadings extended to date of 10 days after receipt of notice of Court's decision on motion for reconsideration (Ziegler, J.)
Feb. 17	9	Motion for reconsideration filed by defts. with proposed order.
Feb. 23	10	Order entered directing brief be filed by 3/20/81 by defts. in support to motion for reconsideration; respondent's brief due 3/30/81 (Ziegler, J.)
Mar. 27	11	Entry of appearance filed by Caroline Mitchell on behalf of pltf.

EDITOR'S NOTE

PAGES 4 thru End WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

DATE	NR.	PROCEEDINGS
Mar. 27	12	Motion to extend time for reply filed by pltf. with proposed order.
Mar. 30	---	Order entered on motion filed 3/27/81 extending time for pltf. to file reply brief to defts. brief in support of motion for reconsideration to 4/20/81 (Ziegler, J.)
Oct. 1	13	Opinion filed and order entered directing claim of pltf. on Title VII dismissed for want of timeliness; further ordered that claims of pltf. on 42 U.S.C. 1985 (3) dismissed for failure to state cause of action; further ordered that motions of defts. to dismiss claims of pltf. predicated on 42 USC 1981 and 1983 denied; further ordered that defts. file answer to pltf's claims in 20 days (Ziegler, J.)
Nov. 4	14	ANSWER filed by defts.
Dec. 10	15	Order entered invoking Rule 511; further ordered that: discovery to be completed by 4/12/82; pltf's pretrial narrative statement due by 5/3/82; defts. pretrial narrative statement due by 5/24/82 (Ziegler, J.)

DATE	NR.	PROCEEDINGS
	1982	
Feb. 23	16	Notice of service of pltf's interrogs. on deft. St. Francis College on 2/7/82, postage prepaid.
Feb. 23	17	Notice of deposition to be taken of Gervase Cain 3/9/82 at 10:00 AM filed by pltf.
Mar. 4	18	Stip to extend time for 3 months for completion of discovery and for filing of pretrial statements filed by parties and order entered granting same (Ziegler, J.)
Mar. 8	19	Motion filed by deft. St. Francis College and order entered extending time to Answer or Object to Pltf's 1st Interrogs. to deft. St. Francis College to 4/14/82 (Ziegler, J.)
Mar. 8	20	Motion filed and order entered extending time for defts. to Respond to Motion for Production of Documents to 4/14/82 (Ziegler, J.)
Mar. 22	21	Motion (request) for production of documents filed by pltf. with proposed order.
Apr. 14	22	Response to motion for production of documents filed by deft St. Francis College.

DATE	NR.	PROCEEDINGS
Apr. 14	23	Objections of deft St. Francis College to certain of pltf's 1st interrogs. to deft St. Francis College.
Apr. 14	24	Interrogs to deft Saint Francis College with answers thereto. (nos 1 thru 74)
Apr. 22	25	Notice reassinging case to Hon Glenn E. Mencer; discovery to end 6/4/82 and pretrial statements due 6/4/82.
Apr. 28	26	Notice to counsel advising closing date for discovery and due date for pretrial statement to be 7/12/82 in accord with order of Ziegler, J. dated 3/4/82; case reassigned to Mencer, J.
May 17	27	Motion to extend time under FRCP 30(e) filed by deft with consent of pltf. and order entered extending time to submit changes in form or substance to deposition and reasons therefor and to sign deposition from 5/21/82 to 6/4/82 (Mencer, J.)
Jun. 14	28	Notice of deposition to be taken 6/24/82 at 1:30 P.M. of Majid-Ghaidan Al-Khazraji a/k/a Majid Al-Khazraji Allan and filed by defts.

DATE	NR.	PROCEEDINGS
Jul. 2	29	Motion to compel discovery filed by pltf. with proposed order.
Jul. 2	30	Certificate of conciliation conference regarding contested discovery (for motion to compel discovery) filed by parties.
Jul. 2	31	Notice scheduling Hearing on Discovery Matters for 7/15/82 at 3:00 P.M. before Mencer, J.
Jul. 19	32	Hearing on Discovery Matters held 7/15/82 before Mencer, J. Memo filed (Concluded C.A.V.) (Rep none) (Briefs due 8/1/82; motion to compel to be ruled on thereafter; discovery extension will be based on the ruling)
Aug. 30	33	Order entered granting pltf's motion to compel discovery filed 7/2/82 in part and deft St. Francis College directed to produce for purposes of inspection and copying by pltf. all documents ref. pltf's involvement in "Tripoli project" and directed to answer Interrog No. 25; all other aspects of pltf's motion to compel discovery denied; further ordered that discovery extended to 10/1/82 and pltf's pretrial narrative statement due

DATE	NR.	PROCEEDINGS
		10/21/82 and deft's pretrial narrative statement due 11/10/82 (Mencer, J.)
Sept 17	34	Motion for amendment of interlocutory order filed by pltf.
Sept 29	35	Order entered on motion filed 9/17/82 directing Order of Ct. dated 8/30/82 denying pltf's motion to compel deft St. Francis College to reveal secret tenure deliberations hereby amended to include following language: "Such Order involves controlling question of law as to which there is a substantial ground for diff of opinion and that immediate appeal from said order may materially advance ultimate termination of litigation" (Mencer, J.)
Sept 30	36	Motion for extension of time for discovery filed by pltf.
Sept 30	37	Notices of depositions to be taken of following persons 9/28/82 at 11:00 A.M. filed by pltf: David McMahon; John Willoughby; Adrian Baylock; Marian Kirsch; Albert Zanauucki; Rodrique Labrie; John Coleman; Kirk Weixel.

DATE	NR.	PROCEEDINGS
Oct. 6	38	Order entered extending discovery time to 1/3/83' pretrial statement of pltf due 1/24/83; defts' due 2/14/83 (Mencer, J.)
Oct. 6	39	Motion for protective under FRCP 26(c) filed by defts. Willoughby, Weixel, Coleman, Labrie, Zanzuccki, Baylock, Kirsch and McMahon with proposed order and certif.
Oct. 8	---	Order entered on motion filed 10/6/82 granting motion for protective order, 8 depositions are not to be had because issues presented in deps identical to those presented by questions propounded to Father Gervase Cain in dep 3/12/82 and in interrogs to St. Fran Col. (Mencer, J.)
Nov. 15	---	Certified copy of order of Judge Weis dated 11/12/82 received from U.S. Court of Appeals and filed remanding petition to district court for compliance with Rule 23 of court (Ct. of Appeals No. 82-8138)
Nov. 26	40	Acknowlegements of service by Petitionsers and respondents counsels of record filed.

DATE	NR.	PROCEEDINGS
Dec. 3	41	Order entered amending 8/30/82 order to include certain language as stated more fully in order (Mencer, J.)
Dec. 8	42	Deposition of Majid A. KHAZRAJI Allan filed.
Dec. 8	43	Deposition of Father Gervase Cain filed.
1984		
Sept 5	44	Order entered directing pltf. file p/t stmt by 10/4/84- deft. to file p/t stmt by 10/24/84; pretrial conf. set for 10/30/84 at 4:30 P.M. (Mencer, J.)
Oct. 4	45	Pltfs Pretrial Narr Statement filed with proposed order.
Oct. 12	w/45	Order entered GRANTING pltf. an additional 30 days to file amendments, corrections or supplements to this pretrial statement FURTHER pltf's motion for reconsideration of discovery order is DENIED. (Mencer, J.)
Oct. 31	46	PRETRIAL CONFERENCE held 10/30/84 before Judge Mencer filed. (Rep.J.Goodworth) Jury trial date: 1/7/85 at 9:30 a.m.

DATE	NR.	PROCEEDINGS
Nov. 13	47	Supplement to Pltf's pretrial narrative statement filed.
Nov. 28	48	Motion for summary judgment filed by defts. w/proposed order.
Nov. 29	49	Notice of briefing schedule re: deft's motion for summary judgment filed.
Dec. 10	50	Motion for continuance of trial filed by pltf. w/proposed order.
Dec. 19	w/50	Order entered directing trial be reschedule for 7/8/85 at 9:30 A.M. Mencer, J.)
Dec. 26	51	Motion for continuance filed by pltf. w/proposed order.
	1985	
Jan. 7	w/51	Order entered granting pltf. additional 14 days to file brief re: Motion for summary judgment; brief due 1/11/85 (Mencer, J.)
Jan. 15	52	Pltfs Affidavits in Opposition to Motion for Summary Judgment by pltf.
Mar. 12	53	Memorandum Opinion & ORDER filed directing Defts Motion for Summary Judgment is Granted; Judgment is entered in favor of the defts, Saint

DATE	NR.	PROCEEDINGS
		Francis College, John Willoughby-Gervase Cain, Kirk Weixel, John Coleman, Rodrique Labrie, Albert Zanzucci, Adrian Baylock, Marian Kirsch and David McMahon, and against the plaintiff Majid Ghaidan Al Khazraji a/k/a Majid Al-Khazraji Allan (MENCER, J.)
Mar. 12	---	Pursuant to the above order filed judgment is hereby entered accordingly. Gilbert W. Conley, Clerk
Mar. 12	---	Notices mailed.
Apr. 8	54	NOTICE OF APPEAL filed appealing order of March 12, 1985 granting summary judgment; order of October 1, 1981 dismissing title VII Counts; Orders of October 12, 1984 denying discovery & denying pltfs motion for reconsideration of its discovery order filed by pltf. Fees paid.
Apr. 8	---	Certified copy of the docket entries and notice of appeal; court orders of October 1, 1981, October 12, 1984, and March 12, 1985 and information statement mailed to US Court of Appeals; copy to Judge Mencer and all counsel of record and John Goodworth Court Reporter.

DATE	NR.	PROCEEDINGS
Apr. 17	55	Letter received from US Ct of Appeals advising case has been docketed at 85-3205.
Apr. 17	56	TPO filed by pltf stating no transcript is needed for the appeal.
Apr. 23	w/56	Statement of issues filed by the pltf.
Apr. 23	---	Record complete for appeal purposes; case certified; 3 copies of docket entries; one certified mailed to US Ct of Appeals.
Apr. 29	---	Certified List in Lieu of Record received from US Court of Appeals as to appeal 85-3205.
Nov. 6	---	Documents 6 and 48 plus two briefs forwarded
Nov. 8	---	Green certified mail receipt returned as received 11/8/85 per Evelyn McElroy.
Nov. 14	---	Briefs in support of summary judgment forwarded.
1986		
Jan. 6	---	Documents #6 and 48 plus briefs returned from U S Court of Appeals. (Briefs returned to J. Mencer)

DATE	NR.	PROCEEDINGS
Mar. 11	---	Slip opinion received from US Ct of Appeals stating that this is an appeal from a summary judgment entered in favor of the defts. Appellant, Majid Ghaidan Al-Khazraji alleges that he a US Citizen was denied tenure at St Francis College on account of his race, religion, and national origin. On appeal appellants case is premised on Title VII 42 USC 1981 and pendent state law claims. We affirm the district court as to title VII claim and reverse as to section 1981 and pendent claims (STAPLETON, J.)
Mar. 24	---	Information sheet on post decision matters received from US Ct of Appeals stating a petition for rehearing on behalf of appellee was filed on 3/17/86
Apr. 7	---	Information sheet on post decision matters stating an order was filed on 4/3/86 denying the petition for rehearing.
Apr. 24	---	Information sheet on post decision matters received from US Ct of Appeals stating an order was filed on 4/22/86 staying the issuance of the mandate to

DATE	NR.	PROCEEDINGS
		5/10/86 pending the filing of a petition for writ of certiorari in the Supreme Court of the U.S. 4/22/86.
May 21	---	INfo sheet on post decision matters stating an order was filed on 5-19-86 further staying the issuance of the mandate to 7/2/86 pndg the filing of a petition for w/cert in the supreme court
Jul. 25	---	Information Sheet on Post Decision Matters rec'd from Ct of Appeals showing a pet for w/cert was filed on 6-2-86 in the Supreme Court at #85-2169
Nov. 17	---	Letter from Ct. of Appeals advising that writ of certiorari having been granted by Supreme Court, Clerk of District Court to forward record.

COMPLAINT
Filed October 30, 1980

U.S. DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

MAJID G. AL-KHAZRAJI, Ph.D.,

Plaintiff

vs.

SAINT FRANCIS COLLEGE,

Defendent

CIVIL ACTION COMPLAINT NO. 80 1550

JURISDICTION IN VENUE

1. Pursuant to 28 U.S.C. Section 1343(4).

This is an action authorized and instituted pursuant to Section 706(f)(1) (f)(3) (f)(g) of Title VII of the Civil Right Act of 1964, as amended, 42 U.S.C. Section 2000e et seq.

2. The unlawful employment practices alleged herein were and are now being committed with the Commonwealth of Pennsylvania and the Western Judicial District of Pennsylvania.

3. The Plaintiff is Majid G. Al-Khazraji, Ph.D., an adult U.S. citizen, who resides at 36-A Vairo Blvd., State College, Centre County, Pennsylvania. The Plaintiff is Muslim, Arabian, and Iraqi in national origin.

4. The Defendent is Saint Francis College, a private white Catholic college located at Loretto, Pennsylvania.

Since July 2, 1965, Defendent Saint Francis College, private college has continuously and is now doing business in the Commonwealth of Pennsylvania where it is engaged in the business of higher education. Annually, in the course and conduct of its business, the Defendent ships and receives substantial amounts of goods across state lines and has continuously and does now employes more than fifteen (15) employees.

5. Since at least July 2, 1965, Saint Francis College has continuously been and

is now an employer engaged in an industry affecting commerce within the meaning of Section 706(B), (G) AND (H) of Title VII, 42 U.S.C., Section 2000e-(B), (G) and (H).

STATEMENT OF COMPLAINT

6. More than thirty (30) days prior to the institution of this law suit, a person claiming to be aggrieved filed charges with the EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC) alleging violation of Title VII by Saint Francis College. All conditions precedent to the institution of this civil action have been fulfilled.

7. On or about February 10, 1978, Saint Francis College intentionally engaged in a discriminatory employment policy in practice based upon national origin, religion, and/or race at its Loretto, Pennsylvania location in violation of Section 703(A) of Title VII. Said

unlawful employment policy and practice consisted of refusing to renew the full-time faculty appointment of Majid G. Al-Khazraji, Ph.D. because of national origin, religion, and/or race.

8. The effect of the policy in practice herein complained of in paragraph (7) has been to deprive the employee herein involved of equal employment opportunity and otherwise adversely affect his status as an employee because of his national origin, religion, and/or race in violation of Title VII.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff, Majid G. Al-Khazraji, Ph.D., respectfully prays that this Honorable Court will:

a.) grant a preliminary and permanent injunction enjoining Saint Francis College, its officers, agents, employees, successors, assigns, and all other

persons in active concert on participation with the College from engaging in any employment practice which discriminates because of national origin, religion, and/or race.

b.) order the College to make whole Majid G. Al-Khazraji, Ph.D. who is adversally affected by the unlawful employment policy in practice described above, by providing the requested tenured faculty position; back pay, with interest, in an amount to be proved at trial and other affirmative reliefs necessary to eradicate the irreparable effects of the College's past and present unlawful employment policy in practice.

c.) grant such further relief as the Court deems necessary and proper.

d.) award the Plaintiff his costs in this action.

RESPECTFULLY SUBMITTED,

s/
Majid G. Al-Khazraji, Ph.D.,

Plaintiff

36-A Vairo Blvd.
State College, PA 16801

Telephone: (814) 237-0078

AMENDED COMPLAINT
Filed November 7, 1980

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF PENNSYLVANIA

MAJID GHAIDAN AL-KHAZRAJI, a/k/a MAJID AL-KHAZRAJI ALLAN, Plaintiff	:	
v.	:	
SAINT FRANCIS COLLEGE, JOHN WILLOUGHBY, GERVASE CAIN, KIRK WEIXEL, JOHN COLEMAN, RODRIQUE LABRIE, ALBERT ZANZUCCKI, ADRIAN BAYLOCK, MARIAN KIRSCH and DAVID McMAHON, individually and in their official capacities, Defendants	:	CIVIL ACTION NO. 80-1550 JURY TRIAL DEMANDED

AMENDED COMPLAINT
P.D.K.

I. JURISDICTION AND VENUE:

1. This action for declaratory relief, back pay, compensatory damages, punitive damages, and the costs of suit, including reasonable attorneys' fees, is

brought by Plaintiff to redress violations of rights secured to him by the laws of the United States and the Commonwealth of Pennsylvania.

2. The action arises under 42 U.S.C. §1981, §1983, §1985(3) and §2000e-5, et seq. for injuries caused by Defendants' violation of rights as guaranteed in the First and Fourteenth Amendments to the Constitution of the United States and by federal law. Relief is sought pursuant to the aforementioned statutes and to 42 U.S.C.§1988 (as amended P.L. 94-599, October 19, 1976) and 28 U.S.C. §2201 (The Declaratory Judgment Act). The amount in controversy exceeds Ten Thousand ($10,000) Dollars, exclusive of interest and costs.

3. The complaint also sets forth a claim for breach of contract under the laws of the Commonwealth of Pennsylvania, as well as violation of the Pennsylvania

Human Relations Act (43 P.S. §951 et seq.) and intentional infliction of mental distress arising out of the facts forming the basis of the federal claims over which this Court has jurisdiction. This Court is requested to assume pendent jurisdiction over the aformentioned claims.

4. Jurisdiction is conferred upon this Court by 28 U.S.C. §1331 and §1343 and 42 U.S.C. §2000e-5.

5. The violations of Plaintiff's rights as alleged herein occurred in the Western District of Pennsylvania. Venue is properly laid in the Western District of Pennsylvania under 28 U.S.C. §1391(b) and 42 U.S.C. §2000e-5(f)(3).

II. PARTIES:

6. Plaintiff, Majid Ghaidan Al-Khazraji, now Majid Al-Khazraji Allan, is a male citizen of Iraqi national origin, who currently resides in Old Westbury,

New York, but at all times relevant hereto resided at R.D. Box 131-K, Loretto, Cambria County, Pennsylvania. He holds a Masters degree from Cornell University and a Ph.D. degree from the University of Wisconsin. He was employed as an Associate Professor in the Department of Behavioral Science at Saint Francis College from August 20, 1973 until May 26, 1979, when his teaching contract was terminated.

7. Defendant Saint Francis College (hereinafter "College") is an educational institution organized as a corporation under the laws of the Commonwealth of Pennsylvania, with principal administrative offices and places of instruction located at Loretto, Cambria County, Pennsylvania. As an institution of higher education, it has received financial aid from the United States of America and the Commonwealth of

Pennsylvania.

8. Defendants John Willoughby Gervase Cain, Kirk Weixel, John Coleman, Rodrique Labrie, Albert Zanzuccki, Adrian Baylock, Marian Kirsch and David McMahon were, at all times material hereto, members of the Tenure Committee of Saint Francis College. The aforementioned defendants (hereinafter collectively "Tenure Committee") are sued individually and in their official capacities as members of the Tenure Committee of Saint Francis College.

III. FACTS:

9. Plaintiff was hired as an Associate Professor of Sociology in the Department of Behavioral Science of Saint Francis College, effective August 20, 1973.

10. Although Plaintiff had six (6) years of previous teaching experience as an Assistant Professor in the Department

of Sociology at Holy Cross College, his initial employment contract with Defendant College excluded consideration of any such previous teaching experience toward tenure. The criteria for promotion and tenure, as set forth in Defendant College's Faculty Guidelines in effect when Plaintiff was hired in 1973, allow a maximum of three years teaching experience at other institutions of higher learning to be credited toward tenure, with a minimum of three years full time service at Saint Francis College.

11. As set forth in the Faculty Guidelines in effect when Plaintiff was hired in 1973, as well as when Plaintiff was considered for tenure in 1978, the criteria for promotion and tenure to be applied in evaluating an applicant for tenure were:

a. compatability with colleagues and students;

b. continued professional growth

c. memberships - academic and professional;

d. memberships - civic and other;

e. moral character;

f. scholarly publications;

g. sense of responsibility; and

h. teaching competence.

12. Plaintiff was not recommended for a promotion from Associate Professor to Professor prior to his application for tenure in 1978, although the minimum requirements for the rank of Professor as set forth in the Faculty Guidelines were a Doctor's degree and three years of full-time teaching experience as an Associate Professor, both of which requirements Plaintiff had fulfilled as of the end of the 1975-76 academic year.

13. After serving a probationary period, Plaintiff presented a formal

application for tenure on January 16, 1978, which included an extensive curriculum vitae, a list of off-campus professional or related experiences of significance, a list of professional and civic memberships, a list of scholarly professional publications, and a list of academic and instructional accomplishments while a faculty member at Saint Francis College.

14. Plaintiff's tenure application was assigned to Defendant Tenure Committee for consideration.

15. Plaintiff made a personal appearance before the Defendant Tenure Committee following the submission of his tenure application in order to provide the Committee with relevant information reflecting upon his qualifications for tenure and to answer questions and clarify any points raised by the individual members of the Tenure

Committee.

16. During the course of Plaintiff's personal appearance before the Defendant Tenure Committee, no questions were raised or directed to him regarding any deficiencies in his tenure application or in his qualifications for tenure, nor did any member of the Committee indicate that Plaintiff's supporting data was inadequate or inconclusive, either in quality or quantity.

17. At the conclusion of the deliberations by Defendant Tenure Committee on Plaintiff's tenure application, he was not requested to make an additional personal appearance to rebut any information gathered by the Committee in the course of its meetings or to respond to any particulars that would otherwise militate against tenure being granted.

18. Plaintiff conformed to and complied with all requirements established by Defendant College for faculty applications for tenure and as published in its Faculty Guidelines. Plaintiff also provided Defendant Tenure Committee with all information and documents requested by the Committee in reviewing Plaintiff's tenure application.

19. Neither Defendant Tenure Committee nor any of the individual Defendant members of the Committee ever informed Plaintiff that it did not have adequate information upon which to render a full, fair and impartial qualitative judgment as to Plaintiff's qualification for tenure.

20. On or about February 10, 1978 Defendant Tenure Committee concluded its deliberations on Plaintiff's application for tenure and voted to recommend that tenure not be granted. Subsequently, the

Board of Trustees of Saint Francis College accepted and ratified the recommendation of Defendant Tenure Committee not to grant tenure to Plaintiff.

21. Plaintiff was verbally informed by Defendant John Willoughby, Vice-President of Academic Affairs, that Plaintiff's tenure application had been denied; however, Defendant Willoughby did not specify or identify any reasons for the decision to deny tenure.

22. Plaintiff was not provided in advance with the reasons for the decision to deny his tenure application, nor was he provided an opportunity to present a response to such reasons.

23. Despite written requests by Plaintiff, the American Association of University Professors, and Plaintiff's legal counsel that Defendant College provide in writing the reasons for the

decision by Defendant Tenure Committee to deny Plaintiff's tenure application, Defendant College has steadfastly refused and failed to provide, either orally or in writing, the reason or reasons for not granting tenure to Plaintiff.

24. On or about March 20, 1978, Plaintiff received an annual contract from Defendant College for the 1978-79 academic year which stated that Plaintiff's appointment as a full-time faculty member at Saint Francis College would not be renewed at the conclusion of that academic year.

25. Plaintiff was not provided in advance with the reasons for the decision not to renew his faculty appointment, nor was he provided and opportunity to present a response to such reasons. In addition, despite requests therefor, Defendant College has steadfastly refused and failed to provide, either orally or

in writing, the reason or reasons for not renewing his faculty appointment.

26. Although Defendant College's guidelines for tenure do not establish an appeal procedure for a faculty member whose tenure application has been denied, Plaintiff initiated various efforts to secure a review and reappraisal of the decisions to deny his tenure application and terminate his faculty appointment within the existing internal structure of Saint Francis College.

27. On or about November 27, 1978, Plaintiff appeared before the Faculty Affairs Committee (FAC) of Defendant College for the purpose of presenting reasons for his appeal from the decision of Defendant Tenure Committee and his request that Defendant Tenure Committee reconvene to reconsider his case.

28. On or about January 31, 1979, the FAC presented a report to the Faculty

Senate of Saint Francis College in which the FAC recommended that Defendant Tenure Committee reconvene and decide whether to reconsider Plaintiff's tenure application. Subsequently, the Faculty Senate accepted the recommendation of the FAC and remanded the matter to Defendant Tenure Committee.

29. On or about February 19, 1979, Defendant Tenure Committee reconvened and voted not to reconsider Plaintiff's tenure application, but did not present any reasons for its decision. Despite requests therefor, Defendant Tenure Committee has steadfastly refused and failed to provide, either orally or in writing, the reason or reasons for not reconsidering Plaintiff's tenure application.

30. At the time Plaintiff submitted his tenure application and at the time of his application was denied by Defendant

Tenure Committee, Plaintiff had fulfilled and satisfied all of the tenure standards established by Defendant College, including, inter alia:

a. award of M.A. and Ph.D. degrees;

b. authorship or co-authorship of over 20 monographs and three articles;

c. membership in various professional and educational societies and organizations;

d. recepient of various academic and professional honors;

e. full-time teaching experience in institutions of higher learning from September 1967 through January 1978, a period of 10 1/2 years;

f. service on various college committees;

g. involvement in community activities;

h. involvement in student activities;

i. development of internship programs and research programs;

k. procurement of various grants, including a $23,000 grant from the Libyan government and over $50,000 in grants from the Southern Alleghenies Planning Commission for Research;

l. involvement with international research as Principal Researcher and Technical Advisor to the Arab Development Institute in Tripoli.

In addition, Plaintiff received a positive evaluation from his department chairman, David McMahon.

31. In the "Saint Francis College of Pennsylvania" publication of Spring 1976, the Plaintiff and his wife, also a member of the Department of Behavioral Sciences at Saint Francis College, were the focus of a feature article headlined "Sociology Students Led to Action, Achievement". In the Winter 1978 issue of the aforesaid publication, the following item appears: "In the behavioral science department Dr. Majid Al-Khazraji's leave of absence to help establish the Arab Development Institute in Libya during the 1977

calendar yeart was a prestigious addition to the department's continuing record of scholarly and community-development activities".

32. By letter dated March 13, 1978, the faculty of the Department of Behavioral Science, including Plaintiff's department chairman, David McMahon, a member of Defendant Tenure Committee, expressed its unanimous support for Plaintiff's appeal for reconsideration of the decision by Defendant Tenure Committee to deny his tenure application. The letter further states:

> "Dr. Al-Khazraji's contribution to the department and to the college has been exceptional. As a teacher he has inspired students to excel in social research. As a colleague, he sets an example for concern with intellectural development, as well as a spirit of sharing in the personal concerns of students and other members of the college community. In addition, he maintains a highly professional commitment.

> We recognize his outstanding contributions to the college's relations with the larger community, as well as to programs within the department, in particular in sociology and social work.
>
> We believe that he has met the qualifications for tenure, and beyond that, excels as a dedicated, energetic, highly competent member of the college community."

33. The Defendants acted improperly, in contravention of its published tenure guidelines, and without any basis in fact in denying Plaintiff's tenure application.

34. Plaintiff's tenure application was improperly denied despite his having provided Defendants with clear and convincing evidence of his fitness to perform the academic work which he had been appointed annually to perform.

35. On or about June 22, 1979, Plaintiff filed a charge of discrimination based on national origin and religion with the Pennsylvania Human Rights Commission, which Commission

simultaneously filed said charge with the Equal Employment Opportunity Commission.

36. On or about August 6, 1980, the United States Department of Justice issued a notice of right to sue to Plaintiff. A copy of said notice is attached hereto as Exhibit "A".

37. Plaintiff was discharged from employment with Defendant College effective May 26, 1979.

IV. CLAIMS FOR RELIEF:

COUNT I - 42 U.S.C. §2000e et seq.

38. Saint Francis College is named as the Defendant in this Count.

39. The averments of paragraphs 1-37, inclusive, of this complaint are incorporated herein by reference.

40. Saint Francis College is engaged in an industry affecting commerce and has more than 25 employees.

41. Defendant Saint Francis College has intentionally discriminated against

Plaintiff with regard to the terms and conditions and privileges of employment on the basis of his national origin and religion by denying him tenure and by refusing to renew Plaintiff's appointment as a full-time faculty member.

WHEREFORE, Plaintiff prays this Count to:

1. Assume jurisdiction over this matter;

2. Require that Plaintiff be reappointed as a full-time faculty member with tenure at Saint Francis College effective February 28, 1979

3. Award Plaintiff back pay, as well as retirement and other benefits to which he is entitled, in an amount to be determined by the Court and punitive damages in the amount of $500,000.00;

4. Award Plaintiff compensatory damages, the costs of suit, and

reasonable attorneys' fees; and

5. Award such other relief as the Court deems necessary and proper.

COUNT II - 42 U.S.C. §1985(3), §1986

42. All Defendants named in this action are Defendants in this Count.

43. The averments of paragraphs 1-41, inclusive, of this complaint are incorporated herein by reference.

44. Defendants, through their overt acts, acting jointly and severally, individually and in their official capacities have conspired to deprive Plaintiff, either directly or indirectly, of his rights, secured by 42 U.S.C. §2000e et seq., 29 U.S.C. §206(d), and 43 P.S. §951 et seq., to be free from discrimination on the basis of national origin and religion in the terms and conditions of his employment by denying him tenure and by refusing to renew

Plaintiff's apointment as a full-time faculty member at Saint Francis College. Said acts have violated 42 U.S.C. §1985(3).

45. Alternatively, Defendants knew of said conspiracy and had the power to prevent the commission of overt acts in furtherance of said conspiracy, but neglected or refused to prevent such acts, in violation of 42 U.S.C. §1986.

WHEREFORE, the Plaintiff prays this Court to:

1. Assume jurisdiction over this matter;

2. Enter judgment declaring that:

   a. Defendants, acting jointly, severally, individually and in their official capacities, have violated rights secured to Plaintiff by 42 U.S.C. § 1985(3) and § 2000e et seq., 29 U.S.C. § 206(d), and 43 P.S. § 951 et

seq., by conspiring to deprive Plaintiff of his right to be free from discrimination on the basis of national origin and religion in the terms and conditions of his employment; or,

b. Defendants, knowing of said conspiracy and having the power to prevent the commission of overt acts in furtherance of such conspiracy, neglected or refused to do so, in violation of 42 U.S.C. §1986;

3. Require that Plaintiff be reappointed as a full-time faculty member with tenure at Saint Francis College effective February 26, 1979;

4. Award Plaintiff back pay, as well as retirement and other benefits to which he is entitled, for the damages he has suffered in an amount to be determined and punitive damages in

the amount of $500,000.00;

5. Award Plaintiff compensatory damages, the costs of suit, and reasonable attorneys' fees; and

6. Award such further relief as the Court deems necessary and proper.

COUNT III - Pendent State Claims

46. All Defendants named in this action are Defendants in this Count.

47. The averments of paragraphs 1-45, inclusive, of this complaint are incorporated herein by reference.

48. The Charter, By-Laws and Faculty Guidelines, as well as the American Association of University Professors norms on academic freedom, constitute part of the employment contract between Plaintiff and Defendant College.

49. Notwithstanding the provisions of this contract, Defendant College, acting upon the recommendation of

Defendant Tenure Committee, unlawfully terminated Plaintiff's employment at Saint Francis College at the end of the 1978-79 academic year and denied him tenure.

50. Plaintiff has at all times faithfully and well performed his duties and functions as Associate Professor at Defendant College and has received increases in compensation while so employed.

51. Plaintiff has satisfied all of the requirements for the award of tenure as specified in his contract of employment with Defendant College.

52. Plaintiff filed a complaint with the Pennsylvania Human Relations Commission on or about June 22, 1980, but Defendant College refused to conciliate. Subsequently, the Human Relations Commission voted to close the case on the basis that it lacked jurisdiction over

the matter on procedural issues.

53. Defendants' actions are in violation of 43 P.S. §951 et seq., the Pennsylvania Human Relations Act.

54. The willful, malicious and intentional actions of the Defendants in denying Plaintiff tenure and refusing to renew his full-time teaching appointment have seriously injured and destroyed his professional reputation, making it impossible or extremely difficult for him to obtain suitable comparable full-time teaching employment. Prior to the unlawful conduct of Defendants in denying Plaintiff's tenure application and terminating his full-time teaching appointment, he had always held full-time employment as a teacher of sociology. Since the occurrence of these unlawful actions, and as a direct result thereof, Plaintiff has been unable to obtain full-time employment in his field commensurate

with his professional abilities and experience. Moreover, in finding employment, Plaintiff has found it necessary to relocate to New York state, while his wife and family remain on Loretto, Pennsylvania where his wife teaches at Saint Francis College, thereby disrupting the family unit.

This inability to obtain suitable employment, which is the direct and proximate result of the unlawful, malicious and intentional actions of the Defandants, has caused Plaintiff to suffer severe emotional distress and depression.

WHEREFORE, Plaintiff prays this Court to:

1. Assume jurisdiction over Plaintiff's pendent state claims;

2. Issue a judgment that Defendant College has breached its employment agreement with Plaintiff and violated

43 P.S. §951 et seq.,

3. Require that Plaintiff be reappointed as a full-time faculty member with tenure at Saint Francis College effective February 26, 1979.

4. Award Plaintiff back pay, as well as retirement and other benefits to which he is entitled, for the damages he has suffered in an amount to be determined and punitive damages in the amount of $500,000.00;

5. Award Plaintiff compensatory damages, the costs of suit, and reasonable attorneys' fees; and

6. Award such further relief as the Court deems necessary and proper.

SHUMAKER and WILLIAMS

By s/C. Kent Price
C. Kent Price
The Pennsylvania Center
P.O. Box 88
Harrisburg, PA 17108
Attorneys for Plaintiff

[Equal Employment Opportunity Commission Notice Of Right To Sue, dated August 6, 1980, was attached to the Amended Complaint of November 7, 1980]

AMENDED COMPLAINT
Filed November 10, 1980

UNITED STATES DISTRICT COURT FOR THE

WESTERN DISTRICT OF PENNSYLVANIA

MAJID G. AL-KHAZRAJI, Ph.D.

Plaintiff

vs.

SAINT FRANCIS COLLEGE AND THE FOLLOWING MEMBERS OF ITS ADMINISTRATION AND FACULTY:

a. Gervase Cain, Executive Vice President;

b. John Willoughby, Vice President for Academic Affairs;

c. John Coleman, Department of History;

d. Rodrigue Labrie, Department of English;

e. Kirk Weixel, Department of English;

f. Marian Kirsch, Department of Biology;

g. Albert Zanzuccki, Department of Business Administration;

h. Adrian Baylock, Department of Mathmatics.

Defendents

AMENDMENT TO CIVIL ACTION

COMPLAINT No. 80-1550

FILED AT THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF PENNSYLVANIA

CIVIL ACTION COMPLAINT No.: 80-1550

JURISDICTION IN VENUE

1. Pursuant to 28 U.S.C. Section 1343(4).

This is an action authorized and instituted pursuant to Section 706(f)(1) (f)(3) (f)(g) of Title VII of the Civil Right Act of 1964, as amended, 42 U.S.C. Section 2000e et seq.

2. The unlawful employment practices alleged herein were and are now committed with the Commonwealth of Pennsylvania and the Western Judicial District of Pennsylvania.

3. The Plaintiff is Majid G. Al-Khazraji, Ph.D., an adult United States

citizen, who resides at 36-A Vairo Boulevard, State College, Centre County, Pennsylvania. The Plaintiff is Muslim, Arabian, and Iraqi in national origin.

4. The Defendents are Saint Francis College, a private white Catholic college located at Loretto, Pennsylvania; and the above-mentioned members of its Administration and Faculty who reside at or nearby its location.

Since July 2, 1965, Defendents Saint Francis College, private college and the above-mentioned members of its Administration and Faculty have continuously and are now doing business in the Commonwealth of Pennsylvania where they are engaged in the business of higher education. Annually, in the course and conduct of their business as a corporation, the Defendents ship and receive substantial amounts of goods across state lines and have continuously

and do now employ more than fifteen (15) employees.

5. Since at least July 2, 1965, Saint Francis College and the above-mentioned personnel of its Corporation have continuously been and are now employers engaged in an industry affecting commerce within the meaning of Section 706(B), (G) and (H) of Title VII, 42 U.S.C., Section 2000e-(B), (G) and (H).

STATEMENT OF COMPLAINT

6. More than thiry (30) days prior to the institution of this law suit, a person claiming to be aggrieved filed charges with the EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC) alleging violation of Title VII by Saint Francis College and the above-mentioned members of its Administration and Faculty. All conditions precedent to the institution of this civil action have been fulfilled.

7. On or about February 10, 1978, Saint

Francis College and the above-mentioned members of its Administration and Faculty intentionally engaged in a discriminatory employment policy in practice based upon national origin, religion, and/or race at their Loretto, Pennsylvania location in violation of Section 703(A) of Title VII. Said unlawful employment policy and practice consisted of refusing to renew the full-time faculty appointment of the Plaintiff, Majid G. Al-Khazraji, Ph.D.; of depriving him of his civil rights and academic freedom; and of causing him severe personal, health, financial, and professional damages because of his national origin (Iraqi), religion (Muslim), and/or race (Arabian).

8. The effect of the policy in practice herein complained of in paragraph seven (7) above has been to deprive the employee herein involved of equal employment opportunity and otherwise

adverselly affect his status as an employee because of his national origin (Iraq), religion (Muslim) and/or race (Arabian), in violation of Title VII.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff, Majid G. Al-Khazraji, Ph.D., respectfully prays that this Honorable Court will:

a.) grant a preliminary and permanent injunction enjoining Saint Francis College, its officers, agents, employees, successors, assigns, and all other persons in active concert or participation with the College; and the above-mentioned members of the College's Administration and Faculty from engaging in any employment practice which discriminates because of national origin, religion, and/or race.

b.) order Saint Francis College and the above-mentioned members of its Administration and Faculty to make whole Majid G. Al-Khazraji, Ph.D. who is adversely affected by the unlawful employment policy in practice described above, by providing the justifiably requested tenured faculty position; back pay, with interest, in an amount to be proved at trail and other affirmative reliefs necessary to eradicate the irreparable effects of the past and present unlawful employment policy in practice of the College and the above-mentioned members of its Administration and Faculty.

c.) grant such further relief as the Court deems necessary and proper.

d.) order an appropriate punitive action prescribed by the law against the College and the above-mentioned

members of its Administration and Faculty.

e. award the Plaintiff his costs in this action.

RESPECTFULLY SUBMITTED,

s/
MAJID G. AL-KHAZRAJI, Ph.D.,
Plaintiff

36-A Vairo Blvd.
State College, PA 16801

Telephone: (814) 237-0078

Pennsyivania Human Relations
Commission Complaint - Exhibit A
to Motion for More Definite Statement,
etc., of January 23, 1981 in U.S. Court
for Western District of Pennsylvania
[Caption omitted in printing]

COMPLAINT

MAJID AL-KHAZRAJI	:	Commonwealth of
	:	Pennsylvania
Complainant	:	Governor's Office
	:	Human Relations
V.	:	Commission
	:	
SAINT FRANCIS	:	COMPLAINT
COLLEGE	:	DOCKET NO. E-16158
	:	
Respondent	:	

1. The Complainant(s) herein (is)(are):

(Name) Majid Al-Khazraji
(Address) R.D. 2 Box 131-K
Loretto, Pennsylvania 15940

2. The Respondent(s) herein (is)(are):

(Name) Saint Francis College
(Address) Loretto, Pennsylvania 15940

3. The Complainant(s) allege(s) that beginning on and/or occuring on and/or beginning prior and continuing on or about to wit May 26, 1979, the Respondent(s) did harm me unjustly by failing to renew my contract.

A. I, the complainant further allege that:

1. I have been employed by the respondents since August 20, 1973, as an Associate Professor of Sociology

2. After serving a probationary period at respondents facility, I applied for tenure on or about January 16, 1978.

2a. At the time of my application for tenure I met respondents minimum qualifications for eligibility, that of six years of college teaching experience; of these a minimum of three years teaching at respondents facility.

3. My formal application for tenure included an extensive curriculum vitae and other items documenting and attesting to my qualifications for tenure.

4. I appeared in person before the tenure committee to provide them with relevant information regarding my qualifications and to answer questions and to clarify points raised by members of the committee.

4a. The Committee never informed me that they didn't have enough information upon which to make a decision.

5. On or about February 10, 1978, the tenure committee, voted to recommend that my application for tenure be denied.

6. On February 20, 1978, I was verbally informed by Dr. John Willoughby, Vice-President for Academic Affairs of the decision by the tenure committee to deny my application, but he did not

specify or identify any specific reasons for the decision.

7. On February 21, 1978, I met with the president of the college, Father Christian Oravec, T.O.R., to request that my denial of tenure be brought before the Board of Trustees.

7a. He agreed to bring the matter to their attention at their meeting that same week.

8. On February 23, 1978, the Board of Trustees, declined to reverse the action of the tenure committee.

9. On March 14, 1978, I addressed a joint appeal to Oravec, and to Father Edmund Carroll, Chairman of the Board of Trustees requesting an appeal to the tenure committees decision.

10. On or about March 20, 1978, I received my annual contract for the 1978-79, academic year.

10a. The contract stated that it was not renewable beyond May 26, 1979.

10b. I signed the contract, but stipulated that my signature should not be construed to imply my acceptance of the decision of the tenure committee, the administration or the trustees.

11. On or about April 10, 1978, I received letters from Oravec and Carroll, expressing their appreciation for my contributions to the college, but upholding the recommendation of the tenure committee.

12. On or about May 15, 1978, I addressed a second appeal to Oravec and Carroll, requesting reasons for my dismissal from the college.

13. On or September 26, 1978, I wrote to the Faculty Senate requesting an intramural review process.

14. On or about September 28, 1978, the Faculty Senate voted unanimously to permit review process and designated the Faculty Affairs Committee as the body to undertake that review.

15. On or about November 27, 1978, I appeared before the Faculty Affairs Committee, to present my reasons for my appeal to the decision of the Tenure Committee and I requested that the Committee reconvene to reconsider my case.

16. On or about January 31, 1979, the Faculty Affairs Committee presented a report to the Faculty Senate with the unanimous recommendation that my case merited reconsideration.

16a. The Faculty Senate then resolved that the 1978, Tenure Committee reconvene and decide whether to reconsider my tenure application.

17. On or about February 19, 1979, the Tenure Committee met, with the exclusion of my department chairman, and decided not to reconsider my tenure application.

B. Respondents have not given me any reason orally or in writing as to why my application for tenure has been denied.

C. I, the complainant further allege that the respondents have discriminated against me because of my national origin, Iraq, my ancestry Arabian, and my religious creed Muslim by denying to grant me tenure and not renewing my contract in that:

1. No other candidate with the support of his or her department has ever been rejected by the Tenure Committee.

1a. I had the support of my department.

2. My qualifications equal or exceed those of individuals recommended for tenure recently or in the past.

3. No faculty member of a non-Judeo-Christian background has ever been tenured.

4. No faculty member from a third world background has ever been tenured.

5. Respondents have refused to cite reasons verbally or in writing as to why I have been denied tenure.

4. The allegations in paragraph 3 hereof constitute(s) an unlawful discriminatory practice or unlawful practice and is in violation of:

Pennsylvania Human Relations Act (Act of October 27, 1955, P.L. 744, as amended). Section 5 Subsection(s) (a)

[Pre-printed paragraph 5 of the Complaint is not marked as being applicable.]

6. No other action based on the aforesaid allegations has been instituted by the Complainant in any Court of before any other Commission within the Commonwealth of Pennsylvania except as follows:

None.

This charge will be referred to EEOC for the purpose of dual filing.

7. The Complainant(s) pray that the Respondent(s) be required

(a) to make the Complainant(s) whole, including but not limited to compensatory and/or punitive awards such as back pay and "out of pocket expenses."

(b) to eliminate all unlawful discriminatory practice(s) and procedure(s).

(c) to remedy the discriminatory effect of past practice(s) and procedure(s).

(d) to take further affirmative action necessary and appropriate to remedy the violations complained of herein.

(e) such further relief as the Commission deems necessary and appropriate.

COMMONWEALTH OF PENNSYLVANIA :
: SS
COUNTY OF CAMBRIA :

Majid Al-Khazraji, of full age, being duly sworn according to law deposes and says: that he is the Complainant herein; that he has read the foregoing complaint and knows the content thereof; that to the best of his knowlege,information and belief the facts alleged therein are true.

s/Majid Al-Khazraji
Signature of Complainant

(Jurat omitted in printing)

Pages 6-9 of deposition of plaintiff on July 21, 1982 in U.S. Court for Western District of Pennsylvania
[Caption omitted in printing]

Deposition of MAJID AL-KHAZRAJI ALLAN
EXAMINATION

By Mr. Fisfis:
[p. 6]

* * *

Q. Was one Adrian Baylock?

A. I don't recall.

Q. Was one Marian Kirsch?

A. I don't recall.

Q. Was one of them David McMahon?

A. I don't recall.

Q. Were any of the prople who made this remark an officer of the college?

A. Faculty.

Q. Faculty, not an officer?

A. Right.

Q. Are you also taking the position that you were denied tenure because of your race?

A. Yes.

Q. What is your race?

A. Caucasian but I was a different branch of the Caucasian race than you are. I am Caucasian but a different branch. I am claiming the national origin which is closer related to race and religion.

Q. Let me ask you of what branch of the Caucasian race are you?

A. I am not an expert on that.

Q. You just said that you were of a different branch.

[p. 7]

A. You know, this is a specialty. It is highly complex.

Q. But you are a member of the Caucasian race?

A. I believe so.

Q. You are not a member of the black race?

A. No.

Q. Or the yellow race?

A. Again, really I cannot answer this because this is a technical matter and we have to have an expert.

Q. Do you know of any races other than white, black and yellow?

A. This, I cannot answer because it is a very highly specialized field. I am not in a position to do that.

Q. What other reasons did you say you feel you were discriminated against?

A. National origin and religion or a combination of the two.

Q. What is your national origin?

A. Arabian and Iraqie.

Q. Are both Arabian and Iraqie --

A. and Moslem.

Q. Are both Arabian and Iraqie national origin designations?

[p. 8]

A. Iraq is part of Arabia.

Q. You are treating Arabia as a place of national origin?

A. You may say so. This is what we call the Arbian peninsula.

Q. That is the geographical area?

A. That's right. This separates it from Iran, Pakistan and so forth. It makes the Arabian peninsula separate.

Q. Which countries would you include within the Arabian national origin area?

A. This is, shall we say -- again, I need an expert on that because sometimes it is part of North Africa. Sometimes we include in the Arabian peninsula Sumaria, Ethiopa, Sudan. Today they include 13 of them. But arbitrarily there is no distinction about Arabia proper.

Q. Could you name, if you would, as many of the countries that you classify as Arabia?

A. Iraq, Kuwqait, Abu Dhabi, Iman, Saudi Arabia, Yemem, Jordan, Syria. That's it.

Q. You also say you are a Moslem?

A. Yes.

[p. 9]

Q. When you were at Loretto were you also an Episcopalian?

A. My wife is.

Q. Were you also one?

A. No, I just go because we believe in each other. We go as one family unit. I don't believe in, shall we say, making a distinction because it is a mixed marriage. I welcome her religion the way she welcomed mine.

Q. Are you or do you belong to any Moslem Mosque in the United States?

A. No.

Q. Are you a formal member of any religious organizations in the United States?

A. No.

Q. Do you regularly attend services at a mosque?

A. No.

Q. Are you an active, practicing Moslem?

A. Yes, with the understanding of the requirements of the Islamic faith that prayers, acting in good manner with fellow man, our private motto, we pray at home, we give at home. We don't have to display our activities as Moslems. Therefore, I was actively engaged in enjoying my faith.

Exhibit E to Motion for
Summary Judgment in U.S. Court for
Western District of Pennsylvania
Filed November 28, 1984

MAJID G. AL-KHAZRAJI, Plaintiff	:	IN THE COURT OF COMMON PLEAS OF CAMBRIA COUNTY, PENNSYLVANIA
vs.	:	NO.
SAINT FRANCIS COLLEGE, Defendant	:	IN EQUITY

AMENDED COMPLAINT

AND NOW, comes the Plaintiff, Majid G. Al-Khazraji, by his attorneys, Shumaker and Williams, and files this Complaint in the captioned matter, alleging the following in support thereof:

1. The Plaintiff is Majid G. Al-Khazraji, and adult individual, who resides at R.D. Box 131-K, Loretto, Cambira County, Pennsylvania.

2. The Defendant is Saint Francis College, a private Catholic college located at Loretto, Cambria County, Pennsylvania.

3. Plaintiff has been employed by Defendant since August 20, 1973 as an Associate Professor of Sociology pursuant to a series of one-year contracts.

4. Each yearly contract between Plaintiff and Defendant has expressly stated that "Saint Francis College subscribes to the American Association of University Professors' norms on academic freedom", thereby making such norms on academic feeedom an integral part of the contractual relationship between Plaintiff and Defendant. Copies of the 1973-1974 and 1978-1979 contracts are attached hereto as Exhibits "A" and "B" respectively, incorporated herein by reference, and deemed an integral part hereof.

5. After serving a probationary period, Plaintiff applied to Defendant for tenure on or about January 1978.

6. Plaintiff's request for tenure was assigned to a Tenure

[Allegations 7-26 of the Amended Complaint were not part of the Exhibit.]

27. The tenure standards adopted by Defendant and in effect at the time that Plaintiff's tenure application submission was denied on or about February 10, 1978 are attached hereto as Exhibit "I", incorporated herein by reference, and deemed an integral part hereof.

28. At the time that Plaintiff submitted his tenure application to Defendant and at the time that Defendant's Tenure Committee denied Plaintiff's tenure application, Plaintiff fulfilled and satisfied each of the tenure standards established by Defendant.

29. Plaintiff believes, and therefore avers, that Defendant acted improperly, in contravention of its own

tenure guidelines, and without any basis in fact in denying his tenure application.

30. Plaintiff believes, and therefore avers, that his tenure applications was improperly denied despite his having provided Defendant with clear evidence of his fitness to perform the academic work which he had been appointed annually to perform.

31. Plaintiff believes, and therefore avers, that consideration of his ethnic (Arab) and religious (Muslim) background were involved and included in Defendant's decision to deny Plaintiff's tenure application and not to renew Plaintiff's faculty appointment.

32. By reason of Defendant's improper action in denying Plaintiff tenure and not renewing his faculty appointment after May 26, 1979, Plaintiff will suffer great and irreparable damage,

the amount of which cannot now be definitely ascertained, in respect to the following matters, inter alia:

[The remaining allegations of the Amended Complaint were not part of the Exhibit.]

GUIDELINES FOR TENURE

TENURE. Saint Francis College, recognizing the need for tenure as a safeguard to academic freedom, extends the security of tenure to all its full-time faculty appointed to the ranks of assistant professor, associate professor, and professor, who, after the satisfactory completion of a period of probation, have given clear evidence of their fitness for the academic work which they were appointed to perform.

Probationary Period. The probationary period for all full-time members is six years. This probationary period may include full-time service in all other institutions of higher learning up to a maximum of two years. This determination of previous service applicable to tenure must be agreed upon in writing at the time of the intial engagement of the faculty member. A minimum of four years of full-time service must be spent at Saint Francis College. This minimum of four years may not be waived even though it would extend beyond the normal six years the probationary period of a faculty member who has had more than two years of teaching experience at other institutions of higher learning. However, in extraordinary circumstances, the President of the College may

recommend tenure to the Board of Trustees at any time with the approval of the Committee on Tenure.

The tendering of a contract for the last probationary period does not indicate the granting of tenure, nor does it imply that tenure will be granted. However, the decision of the Board of Trustees concerning tenure will be communicated to the applicant at least twelve months prior to the expiration of the last probationary contract.

Apart from the merits of individual candidates, which shall have been previously evaluated by the Committee on Tenure, the Board of Trustees of the College will consider in the granting or the withholding of tenure both budgetary considerations and the number and age of tenured faculty members already in a department. For these reasons a decision to withhold tenure should not necessarily be taken to reflect a negative judgment of an individual's competence.

Principles governing tenure.

A. Membership on the faculty is no guarantee of tenure. The responsibility for demonstrating a high level of teaching effectiveness and professional growth and for compliance with the other criteria listed below lies with the individual faculty member.

B. Tenure normally implies the right of a faculty member to continuous reappointment until retirement.

C. Tenure eligibility extends to all faculty members -lay, clerical, and religious.

Committee on Tenure

1. Structure

A. Personnel

1. The Vice President for Academic Affairs, who shall serve as the chairman of the committee.

2. Six tenured faculty members elected under the auspices of the Faculty Senate.

3. The Executive Vice President of the College.

4. The chairman of the department of which the candidate for tenure is a member.

B. Elections and meetings

1. Elections will be held under the auspices of the Faculty Senate during the first week of December.

2. The committee will meet for deliberations after the official opening of the Spring Semester and will conclude their deliberations prior to the February meeting of the Board of Trustees.

II. Sources of committee information

A. The candidate's formal application on the approved application form, in addition to any other documentation, such as complete and recent student evaluations, which he deems relevant.

B. The chairman of the applicant's department, who shall submit written visitation reports, a written evaluation of the candidate, and a recommendation.

C. The Vice President for Academic Affairs, who may submit a written evaluation of the candidate and any other information which he deems relevant.

D. Personal knowledge of the members of the committee.

E. Applicant's personal appearance before the committee to present his application.

F. Statements of committee chairmen attesting to the applicant's activities on College and/or Senate committees, provided at the request of the candidate.

III. Functions of the committee

A. Validate the possession by the candidate of the service requirements for tenure.

B. Render a qualitative judgment on the candidate's qualification based on the considerations listed under IV below.

C. Recommend the candidate for either tenure or termination.

IV. Considerations for rendering a qualitative judgment

A. Teaching effectiveness and professional compatability with colleagues and students as determined from the following sources:

1. Evaluation by department chairman.

2. Evaluation by the Vice President for Academic Affairs.

3. Evaluation by students as indicated on official student evaluation forms.

4. Personal knowledge of members of the Committee on Tenure.

B. Continued professional growth

1. Amplification

a. Continuing academic progress toward the doctorate.

b. Participation in conventions, workshops, etc., or professional groups.

c. Evidence of candidate's awareness of contemporary developments in his academic field.

2. Sources of information

a. Department chairman.

b. Candidate.

C. Memberships - academic and professional. Information supplied by candidate.

D. Memberships - civic and other. Information supplied by candidate.

E. Moral character. In the absence of specific evidence to the contrary, it is assumed that the candidate does possess moral character.

F. Scholarly publications. To be appraised by department chairman.

G. Sense of responsibility

1. Amplification

a. Effective discharge of professional routines, e.g., regular fulfillment of teaching schedule, attendance at faculty and department meetings, compliance with directions.

b. Effective discharge of special assignments.

c. Innovations of professional programs.

d. Effective participation in committee.

e. Direction of student activities.

2. Sources of information. All general courses of committee information.

V. Internal procedures of the committee

A. A quorum shall consist of the full membership of the committee. The seventh and eighth ranked faculty members in the election will be first and second alternates to serve on the committee only when elected faculty members withdraw.

B. At its initial meeting the committee shall elect a recording secretary whose responsibility shall be to prepare two copies of the committee-approved minutes and recommendations. Both copies shall be permanently retained by the chairman of the committee.

C. At the initial meeting of the Tenure Committee each year, the chairman shall provide each member of the committee with an official copy of the tenure regulations and shall review them in detail with the membership. He shall inform the committee that all deliberations are to be held permanently confidential.

D. As each applicant for tenure is considered, the chairman shall direct the attention of the committee to an explicit consideration of each criterion for tenure as it applies to the candidate's application. There shall be no restriction on the discussion relative to the evaluation of the candidate's strengths and weaknesses. During this discussion,

questions should be formulated to be directed to the candidate's chairman.

E. Thereafter, the committee shall invite the chairman of the candidate's department to join the committee for further deliberation and for the balloting.

F. Committee voting shall be by secret ballot and shall be undertaken after each candidate has been considered. Ballots shall be collected by the chairman of the committee after each vote. The ballots will then be sealed and retained by the chairman, to be tabulated by the chairman and the senior member of the committee (in years of service at Saint Francis College). After all voting has been concluded, the chairman will then announce to the membership the outcome of the balloting, without disclosing the actual vote count.

G. No candidate receiving more than three (3) negative votes shall be recommended for tenure.

H. Upon the disposition of all the applications, the committee may, at its discretion, formulate summary recommendations with respect to the tenure procedures.

I. The committee shall submit its recommendations concerning applicants for tenure to the President of the College.

J. The President of the College shall notify each candidate of the

disposition of his application by the Board of Trustees. Should the Board of Trustees decide to act at variance with committee recommendations for a tenure application, the President shall inform the candidate in writing of this fact. The chairman of the Tenure Committee shall inform the committee members of the Board of Trustees' disposition of the committee recommendations.

K. Thirty (30) days after the candidate has been notified of the final disposition of his application, all committee ballots shall be destroyed by the chairman of the committee.

Termination of Tenure

I. Grounds. The President of the College with the concurrence of the Board of Trustees may dismiss a tenured faculty member on the grounds of incompetence; insufficient course offerings in his field; the discontinuance of a department; financial necessity on the part of the College; or on grounds of moral turpitude.

II. Procedures.

A. If tenure is to be terminated because of financial necessity on the part of the College, it is incumbent on the institution to show the existence of such necessity of dismissal. Should any faculty member's services be terminated because of financial necessity, lack of sufficient course offerings within a department, or the discontinuance

of a department, the faculty member shall receive one year's notice of termination of service, or, in lieu of such notice, an amount of money equal to his last year's contractual salary. However, before resorting to termination of service, the College will make every reasonable effort to retain the faculty member in some other area of employment consistent with the faculty member's qualifications.

B. If tenure is to be terminated on grounds of incompetence or moral turpitude, the College will abide by the procedures outlines for such situations in AAUP Policy Documents and Reports, 1973 edition.

III. Clerical and religious faculty. Tenure for a cleric or religious ceases upon termination of assignment of the cleric or religious by his appropriate ecclesiastical or religious superior.

Review of Guidelines for Tenure. These guidelines may be revised at any time, but a formal review should be made at least every three years.

Revised: September 1974

Plaintiff's Affidavits in
Opposition to Motion for
Summary Judgment in U.S. Court
for Western District of Pennsylvania
Filed January 15, 1985

Affidavit

I, Thelma Griffith-Johnson, swear that:

From May 7, 1975, through June 16, 1982, I was employed by the Commonwealth of Pennsylvania as the Regional Director of the Harrisburg Regional Office of the Pennsylvania Human Relations Commission (PHRC). As Director I was responsible for the day to day administration of programs in 39 counties of Pennsylvania, one of which is Cambria County, located in the Western part of the State, contiguous to Pittsburg.

During my tenure the Pennsylvania Human Relations Commission was a 706 agency contracted by the U.S. Equal Employment Opportunity Commission to intake, dual file and investigate charges indigenous to the 706 agency's area and which were alleged infractions of Titles VII, IX and X. Since there is no federal regional office in Harrisburg, the PHRC Harrisburg Regional Office filed its dual filed charge with the Pittsburg or Philadelphia Regional Office of EEOC, as was appropriate.

During 1978 and 1979 the intake divisions of the Pennsylvania Human Relations Commission were prohibited from docketing cases which charged termination as a result of wrongful doing until the

termination had taken place. Notification of impending termination at some future date was considered insufficient reason to docket the charge or to proceed with the investigation.

On June 22, 1978, Dr. Majid Al Kazaraji filed such a case against St. Francis College, Cresson, Pennsylvania with the Harrisburg Regional Office.

The first time I met Dr. Al Kazaraji was in late May 1980, when he came to my office for an exit interview. During that meeting I learned from him that he had been advised by St. Francis College to exhaust all of his options at the college before attempting to file with an outside agency.

I learned also that Dr. Al Kazaraji sought to file with the Pittsburg Regional Office of PHRC, the Education Department of PHRC and the Harrisburg Regional Office of the PHRC, several times before his last day of work - May 26, 1978.

I subsequently spoke to Alphonso Brodus, intake representative and to Arbedella Davis the investigator in this matter. Mr. Brodus verified and Ms. Davis supported that he had received telephone calls and material from Dr. Al Kazaraji which he could not process because the complainant was still gainfully employeed by the respondent. Case records show Dr. Al Kazaraji's charge was docketed by appointment on June 22, 1979 or 27 days after his final working day at St. Francis College. On the same day it was dual filed with the EEOC which is within 180 days of Dr. Al

Kazaraji's February 19, 1979 notice from St. Francis College that the matter of his tenure had not been resolved in his favor. On that basis EEOC issued a Right to Sue Letter to Majid A. Kazaraji on August 6, 1980.

The Pennsylvania Human Relations Commission's practice of refusing a complaint until the last day of work prevented Dr. Majid Al Kazaraji from filing his case with PHRC. Although Mr. Brodus received and accepted a charge and supporting data from Dr. Al Kazaraji well in advance of the June 22, 1978 filing date he could not docket the charge because of General Council Robert Merrin's instructions not to accept such cases until the complainant had in fact been terminated and had spent the last working day on the job.

(Jurat omitted in printing)

s/Thelma Griffith-Johnson
Thelma Griffith-Johnson

IN THE UNITED STATE DISTRICT
COURT FOR THE WESTERN DISTRICT
OF PENNSYLVANIA

MAJID-GHAIDAN AL-KHAZRAJI ALLAN,

Plaintiff,

vs. Civil Action No. 80-1550

SAINT FRANCIS COLLEGE,

Defendant.

PLAINTIFF'S AFFIDAVITS IN OPPOSITION
TO MOTION FOR SUMMARY JUDGMENT

I. AFFIDAVIT OF

DR. MAJID AL-KHAZRAJI ALLAN

1. I am of Arab ancestry and Iraqi National origin, having been born in Baghdad, Iraq. I practice the Muslim religion. Although Arabs, Indians and certain other ancestries are "Caucasian", they are of a different "branch" of the Caucasian race than those whites commonly referred to as "Caucasian", and I, with others of Arab ancestry, have darker skin

color than those customarily referred to as Caucasian.

2. After learning of the negative vote of the Tenure Committee, I had a series of meetings with Christian Oravec, President of the Defendant College and David McMahon. At three of these meetings, I was advised not to "do anything" until Saint Francis College made a final decision on my petition for reconsideration of the denial of my tenure application. I pressed my appeal by letters to the president, Christian Oravec, and Board of Trustees. In March 1978 I had a meeting with Christian Oravec in which he advised me not to sign my terminal contract, while Father Oravec explored "other routes" to solve my problem regarding tenure, including my staying on the faculty under yearly appointments or a research position. In September 1978 I appealed to the Faculty

Senate, which voted unanimously to permit a review by the Faculty Affairs Committee. On January 31, 1971, the Faculty Affairs Committee presented a report to Faculty Senate unanimously recommending reconsideration of my case by the Tenure Committee. On February 6, 1979, the Tenure Committee rendered its final decision and denied reconsideration of my case. This was a "final decision" from which no internal appeal could be taken.

3. A history of my contacts with the Pennsylvania Human Relations Commission, as verified by the documents attached hereto as Exhibits 1 through 6, is as follows:

1978:	09/14	by phone
	09/18	by phone
	09/25	by phone
	10/05	by phone and signed letter to Alfonso Broaddus containing documents outlining charge of discrimination

1979: 02/15 (3 calls) phone
03/06
03/07
03/26
03/27
04/06 letter
04/13
05/14
05/15
05/16
05/25 (2 calls)
05/31

I have attached copies of phone records from Bell of Pennsylvania for the months of September, October 1978 and February, March, April and May 1979, showing seventeen calls placed by me to the PHRC regarding my charge of discrimination. I have also attached copies of my letter of October 5, 1978 which contained various documents submitted to PHRC in support of my charge of discrimination. (As such documents are privileged from disclosure under PHRC regulations when submitted by complainant, I am not enclosing them.)

4. On 5/10/79, I retained counsel to file a breach of contract case in Cambria County Court. I was not represented by counsel from February 20, 1978 through May 1979, and had no way of knowing that the PHRC's legal advice to me that a charge could not be filed until my last day of work (May 25, 1979) was in error. At no time did I ever see any postings of my rights under Equal Employment Opportunity law on the premises of Saint Francis College, nor had I received any advice from any person that the "time" for filing my charge was 90 or 300 days from February 10, 1978, the date of the Tenure Committee vote.

5. I received a notice from the PHRC that they were closing my case for lack of jurisdiction based upon my not having filed within 90 days, and because I had filed a civil complaint May 10, 1979. I did not have any hearing of the merits of

my complaint at the PHRC. Although I was in contact with the Commission repeatedly from September 14, 1978 through May 1979, they never told me to file, and indeed told me I could not file until May 25, 1979. Nor did my then-lawyer, or PHRC ever tell me that filing my breach of contract suit in State court would deprive them of jurisdiction to hear my discrimination complaint. My faith in the Commission was shaken, and I decided that it was useless to appeal their decision of no jurisdiction. However, I contacted EEOC, who issued to me a right-to-sue letter permitting me to sue under Title VII. I sued pro se October 30, 1980, within the 90-day period on the face of my right-to-sue letter dated August 6, 1980.

* * *

(Jurat omitted in printing)

s/
Majid Gaidan Al-Khazraji

ORDER OF SUPREME COURT OF
UNITED STATES GRANTING CERTIORARI

"The petition for a writ of certiorari is granted limited to Questions 1 and 2 presented by the petition. The case is set for oral argument in tandem with No. 85-2156, Shaare Tefila Congregation v. Cobb. Justice Scalia took no part in the consideration or decision of this petition."